

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 24-cv-21625-BLOOM/Elfenbein**

MARLEN ZAMORA,

Plaintiff,

v.

AAP IMPLANTS, INC.,

Defendant.

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**ORDER ON REPORT AND RECOMMENDATION**

**THIS CAUSE** is before the Court upon Defendant AAP Implants, Incorporated’s Motion to Dismiss the Second Amended Complaint (“Motion”). ECF No. [47]. The Court referred the Motion to Magistrate Judge Marty Fulgueira Elfenbein for a Report and Recommendation (“R&R”) on August 20, 2024. ECF No. [51]. On November 20, 2024, Judge Elfenbein issued a R&R recommending that Defendant’s Motion be granted in part and denied in part. ECF No. [54] at 15. Specifically, Judge Elfenbein recommends: (1) Counts I and VI of the Second Amended Complaint be dismissed without prejudice; (2) Count VII be dismissed with prejudice; and (3) Defendant’s request to dismiss Count III be denied. *Id.* at 16.

The R&R advised the parties that they “have fourteen (14) days from the date of being served with a copy of th[e] Report and Recommendation within which to file written objections[.]” *Id.* To date, neither party has filed objections nor has either party sought an extension of time to file objections. “If a party fails to object to any portion of the magistrate judge’s report, those portions are reviewed for clear error.” *Macort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006) (quoting *Johnson v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir.

1999). The portions of the report and recommendation to which an objection is made are reviewed *de novo* only if those objections “pinpoint the specific findings that the party disagrees with.” *United States v. Schultz*, 565 F.3d 1353, 1360 (11th Cir. 2009); *see also* Fed. R. Civ. P. 72(b)(3); *Williams v. McNeil*, 557 F.3d 1287, 1291 (11th Cir. 2009) (citing 28 U.S.C. § 636(b)(1)). Nevertheless, the Court has conducted a *de novo* review of the record and is fully advised. Upon review, the Court finds the R&R to be well reasoned and correct. The Court therefore agrees with the analysis in the R&R and concludes that Defendant’s Motion to Dismiss, ECF No. [47], is granted in part and denied in part for the reasons stated therein.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Report and Recommendation, **ECF No. [54]**, is **ADOPTED**.
2. Defendant’s Motion to Dismiss, **ECF No. [47]**, is **GRANTED IN PART** and **DENIED IN PART**.
3. Counts I and VI of the Second Amended Complaint are **DISMISSED WITHOUT PREJUDICE**. Plaintiff shall file a Third Amended Complaint **by December 19, 2024** that cures the deficiencies in Counts I and VI of the Second Amended Complaint should Plaintiff proceed with those claims.
4. Count VII of Plaintiff’s Second Amended Complaint is **DISMISSED WITH PREJUDICE**.
5. Defendant’s Motion to Dismiss is **DENIED** to the extent Defendant seeks to dismiss Count III of Plaintiff’s Second Amended Complaint.

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**DONE AND ORDERED** in Chambers at Miami, Florida, on December 6, 2024.

A handwritten signature in black ink, appearing to be 'JB' or similar, written over a horizontal line.

**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Copies to:

Counsel of record